

REMARKS

In the Office Action the Examiner noted that claims 1-47 are pending in the application. The Examiner rejected claim 1, objected to claims 2 and 3, and allowed claims 4-47. By this Amendment, claim 1 has been amended, and new claims 48 and 49 have been added. No new matter has been presented. Thus, claims 1-49 are pending in the application. The Examiner's rejections are traversed below, and reconsideration of the rejected claim is respectfully requested.

Entry of Amendment Under 37 C.F.R. §1.116

The Applicant requests entry of this Rule 116 Response because: the amendment was not earlier presented because the Applicant believed in good faith that the cited reference did not disclose the present invention as previously claimed; the amendment of claim 1 should not entail any further search by the Examiner since no new features are being added or no new issues are being raised; and the amendment does not significantly alter the scope of the claim and places the application at least into a better form for purposes of appeal. No new features or new issues are being raised.

The Manual of Patent Examining Procedures sets forth in Section 714.12 that "any amendment that would place the case either in condition for allowance or in better form for appeal may be entered." Moreover, Section 714.13 sets forth that "the Proposed Amendment should be given sufficient consideration to determine whether the claims are in condition for allowance and/or whether the issues on appeal are simplified." The Manual of Patent Examining Procedures further articulates that the reason for any non-entry should be explained expressly in the Advisory Action.

Claim Rejection Under 35 USC §102

On page 2 of the Office Action the Examiner rejected claim 1 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,480,454, issued to Wada et al. (hereinafter referred to as "Wada").

The Examiner states that Wada "shows an optical disk recording and reproducing apparatus comprising: an aberration correction element 184 having a retardation member (liquid crystal) for selectively varying the phase difference of a polarized light beam based on the

polarization direction as cited in column 20 lines 40-47.” The optical element 184, referred to by the Examiner as the aberration correction element, is controlled by an optical element control circuit 190, which outputs a signal to the optical element 184 to correct wave-front aberrations caused by a tilt of a recording medium 189 (Column 22, lines 40-43). The light entering the optical element 184 is then subjected to a phase change to correct the wave-front aberrations (Column 22, lines 43-47). The optical element includes electrodes 13 and 14 surrounding a liquid crystal 17 (Column 8, lines 40-54). “[T]he optical element 184 corrects aberrations by applying a different voltage to each segment electrode of the voltage applying electrode, so as to partially change the refractive index of the liquid crystal” (Column 20, lines 3-6).

Claim 1 of the present application, as amended, recites:

An aberration correction element, comprising:
a retardation member, having fixed refractive indices, selectively varying a phase difference of an incoming light beam according to a polarization of the incoming light beam.

Therefore, the aberration correction element of claim 1 of the present application has “fixed refractive indices, selectively varying a phase difference of an incoming light beam according to a polarization of the incoming light beam.”

This is in direct contrast to Wada, in which the optical element 184 has varying refractive indices according to the voltage applied to the electrodes 13 and 14 in the optical element 184. “Changing the voltage between the voltage applying electrode 13 and the opposing electrode 14 alters the refractive index of the liquid crystal 17, which changes the phase of incident light” (Column 9, lines 18-21). Therefore, the refractive indices of the optical element 184 in Wada are not fixed, but rather are variable, and the optical element 184 requires an additional control circuit 190 applying a voltage to the optical element 184 to change the phases of incident light.

Therefore, Wada does not disclose the feature of an aberration correction element having “fixed refractive indices, selectively varying a phase difference of an incoming light beam according to a polarization of the incoming light beam.” Accordingly, Wada does not disclose every element of the Applicant’s claim 1. In order for a reference to anticipate a claim, the reference must teach each and every element of the claim (MPEP §2131). Therefore, since Wada does not teach the features recited in independent claim 1, as stated above, it is respectfully submitted that claim 1 patentably distinguishes over Wada, and withdrawal of the §102(e) rejection is earnestly and respectfully solicited.

Claim Objections

On page 2 of the Office Action the Examiner objected to claims 2 and 3 as being dependent upon a rejected base claim, but indicated that the claims 2 and 3 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. As stated in the previous section of this Amendment, claim 1 patentably distinguishes over the Wada. Further, claims 2 and 3 depend from claim 1 and include all of the features of that claim plus additional features which are not taught or suggested by Wada. Therefore, it is submitted that claims 2 and 3 also patentably distinguish over Wada, and withdrawal of the objections to claims 2 and 3 is earnestly and respectfully solicited.

Further, regarding the Examiner's statement that claims 2 and 3 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, new claims 48 and 49 have been added. New claims 48 and 49 recite the features of claims 2 and 3, respectively, and include all of the limitations of claim 1 as presented before the present Amendment.

New Claims

New claims 48 and 49 have been presented with respect to the Examiner's objection to claims 2 and 3, and respectively recite the features of those claims including the limitations of the base claim as presented before the present Amendment.

Therefore, it is respectfully submitted that claims 48 and 49 patentably distinguish over Wada.

Summary

In accordance with the foregoing, claim 1 has been amended, and claims 48 and 49 have been added. No new matter has been presented. Thus, claims 1-49 are pending and under consideration.

There being no further outstanding objections or rejections, it is respectfully submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

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Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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